

REMARKS

The Pending Claims

Currently pending are claims 186, 189-192, 195 and 197-205. Claims 109-167, 199 and 206-208 are canceled by this response. Reconsideration of the pending claims is respectfully requested. Support for the claim amendments can be found in Applicants specification as originally filed and contain no new matter.

Summary of the Office Action

The Office Action dated February 6, 2007 objects to the specification for failing to provide proper antecedent basis for the claimed subject matter. The specification has been amended accordingly. Support for the amendment to paragraph [0103] of the specification can be found in original claim 46.

Claim 202 is objected to for being of improper dependent form. Claim 202 has been amended to depend from claim 186 to correct this informality.

Claims 195, 199 and 200 are rejected under 35 USC 112, first paragraph. Claim 195 has been amended to overcome this rejection. Claim 199 is cancelled. Claim 200 has been amended to overcome this rejection.

Claim 186 is rejected under 35 USC 112, second paragraph. The examiner objects to the term “substantially” as used in connection with a homogeneous mixture. As Applicants discuss in paragraph [0115] of the specification, typical levels of activated carbon are less than 5% and in illustrative embodiments the carbon is present in amounts as low as 0.3%. Applicants use the term “substantially” in the specification and in the claims to account for mechanical inconsistencies that may occur in the agglomeration equipment utilized.

Claims 186, 189-192, 195 and 197-205 are rejected under 35 USC 103(a) as being unpatentable over Peleties, US Patent 5,638,770 in view of Preti et al., US Patent Application Publication US 2002/0046710. Independent claim 186 has been amended to more clearly define the invention. Support for the amendments to claim 186 can be found in at least paragraphs

[0076]-[0083] and [0113]-[0115] of Applicants' specification. Applicants claim "composite particles comprising...sodium bentonite, expanded perlite and activated carbon...wherein the clump strength, an indication of the percentage of particles retained in a clump after six hours upon addition of animal urine, is greater than 90%."

The Examiner states that "as the Peleties reference as modified by Preti is inclusive of the structural composition of the claimed elements, it is inherent that the particle as taught would have a clump strength greater than 90%." Under MPEP 2112, IV, "In relying upon the theory of inherency, the examiner must provide a basis in fact and /or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient." (*In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) *emphasis added*.) The declaration of Christina Borgese and Marc Privitera (submitted herewith) shows that the experimental conditions disclosed in Peleties could not be replicated using sodium bentonite. Thus, Applicants submit that the properties claimed by Applicants are not inherently disclosed in Peleties.

Furthermore, Applicants stress that Preti deals with removing malodor from a liquid solution (i.e., swine slurry). Applicants agree with the Examiner that activated carbon is known to help reduce animal waste malodor. However, as discussed by Applicants in paragraphs [0006], [0054], [0114] and [0115] carbon used in animal litter prior to Applicants' invention involved embodiments that led to litters that were either overly dusty or contained high concentrations of larger sized carbon particles, which tended to segregate during use. "PAC has only rarely been used in absorbent particles, and particularly animal litter, as it tends to segregate out of the litter during shipping, thereby creating excessive dust (also known as "sifting"). By agglomerating PAC into particles, the present invention overcomes the problems with carbon settling out during shipping." (See Applicants specification ¶ [0054].)

In view of the amendment to independent claim 186 and the above remarks, it is believed that the prior art rejection of this claim is overcome and should be withdrawn. Claims dependent

upon a claim that is not anticipated by a reference cannot be rejected under 35 U.S.C. § 102 and claims dependent upon a claim that is not obvious cannot be rejected under 35 U.S.C. § 103. See, e.g., *RCA Corp. v. Applied Digital Data Systems*, 221 U.S.P.Q.2d 385 (Fed. Cir. 1984); *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Since the cited references do not render independent claim 186 anticipated or obvious, it is respectfully submitted that dependent claims 189-192, 195, 197-198, 200-205 are likewise patentable.

In addition, Applicants have amended withdrawn claims 168-176 consistent with the amendments to claim 186. Thus, Applicants respectfully request rejoinder of these claims.

CONCLUSION

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

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Respectfully submitted,

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